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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/335,648 06/18/99 KIMLE

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EXAMINER

TM02/1108

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application No.

09/335,648

Applicant(s)

KIMLE ET AL.

Examiner

Charles Kyle

Art Unit

2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on August 29, 2001.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Objections***

The objection to Claim 17 is withdrawn based on Applicants' amendment.

***Claim Rejections - 35 USC § 112***

The rejection of Claim 22 is withdrawn based on Applicants' amendment.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-2, 4-18, 20, 22-23 and 25-28** are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Commodity Trading Manual, hereinafter referred to as Manual.

**Concerning Claim 1**, Walker et al disclose the invention substantially as claimed including a method for contracting of commodities on the Internet (Abstract); which provides a centralized database for storage and retrieval of data (Fig. 2, elements 255, 269, 265, 267 and Col. 12, line 35 to Col. 13, line 62); storage in the database data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); in response to a command input, displaying a list of desired commodities and related information regarding types, amounts or deliveries of the desired commodities (Figure 9 and Col.

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18, line 56 to Col. 19, line 12; receiving input data relating to a specific type and amount of commodity which the supplier is willing to supply (Col. 13, lines 11-22 and 30-34) and generating a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48).

Walker et al do not specifically disclose the storage and processing of information related to agricultural commodities in their invention although they suggest its applicability to commodities when they describe commodities as being handled best by buyer-driven markets, such as their invention. See Col. 2, lines 45-54. Manual discloses information related to agricultural commodities including types and amounts of agricultural commodities (page 194), trading by buyers desiring agricultural commodities and suppliers willing to supply agricultural commodities (pages 35-46) and sales contracts for such agricultural commodities (pages 315 and 324). It would have been obvious to one of ordinary skill in the art at the time of the invention to have processed the agricultural commodities information to generate contracts as disclosed by Manual in the method of Walker et al, because this would have provided a buyer-driven market suitable for commodities which had the advantages recited by Walker et al at Col. 10, line 57 to Col. 11, line 3, as follows:

It is a goal of the present invention to provide a robust system which matches buyers' requirements with sellers capable of satisfying those requirements. The invention provides a global bilateral buyer-driven system for creating binding contracts incorporating various methods of communication, commerce and security for the buyer and the seller. The power of a central controller to field binding offers from buyers, communicate those offers globally in a format which can be efficiently accessed and analyzed by potential sellers, effectuate performance of resulting contracts, resolve disputes arising from those contracts, and maintain billing, collection, authentication, and anonymity makes the present invention an improvement over conventional systems.

**As to Claim 2**, Walker et al disclose information input by a browser at Col. 15, line 66 to Col. 16, line 2.

**Regarding Claim 4**, Manual discloses agricultural commodities as agricultural products at page 193, paragraph 1 to page 194, para. 2. See also page 197, Table and page 202, para. 3.

**With respect to Claim 5**, Manual discloses agricultural commodities as grains at page 199, para. 1 to page 202, para. 6 and as oilseeds at page 206, para. 5 to page 212 para. 4.

**Regarding Claim 6**, the Examiner takes Official Notice that fruits and vegetables are perishable products, as are grain and oilseeds. They require much the same harvesting, shipment and processing as grain and oilseeds. It would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the combination of elements of Walker et al and Manual to contract for fruit and vegetable production because these products were analogous to grain and oilseeds and had similar requirements.

**With respect to Claim 7**, Manual discloses agricultural commodities as animals at page 212, para. 5 to page 219, para. 6.

**Regarding Claim 8**, see the discussion of Claim 6 above.

**As to Claim 9**, Manual discloses data relating to allocation of quantities of agricultural products among a plurality of areas at page 199, para. 1 to page 201, para.6. It would have been obvious to one of ordinary skill in the art at the time of the

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invention to have included this feature in the method of Walker et al because this would have facilitated the real world benefit of obtaining agricultural products of different varieties at differing times. It would also have reduced risk of loss of deliverable agricultural product by obtaining product from a plurality of areas, thus making total supply less susceptible to bad weather in one area.

**Concerning Claim 10**, see the discussion of Claim 4 above and it would further have been obvious to have updated the listing based on a change in data as a result of contracting between the supplier and the buyer. For example, if Smith had input data about desired 5,000 acres of Durum wheat, the database listing would have to have been updated to reflect that fact to correctly present information to potential suppliers. If Jones had then contracted for Jones' 5,000 acres of Durum wheat, the database would likewise require updating of the fact that the acreage was committed to production for Smith in order to correctly present information to other contracting participants.

**Regarding Claim 11**, Walker et al disclose a paper contract at Col. 6, lines 35-44.

**As to Claim 12**, Walker et al disclose an electronic contract using a digital signature at Col. 6, lines 45-65.

**Regarding Claim 13**, see the discussion of Claim 1 above, and Manual further discloses data related to agricultural crops to be expressed as bushels at page 324, "trading unit". As to the element recited in Claim 13 of updating data to reflect additional acres committed by the grower to display allocation of acres committed to the desired crop, see the discussion of Claim 10 above regarding updating.

**As to Claim 14**, Manual discloses management of delivery times and methods at page 350, "Futures Contracts", line 4.

**Regarding Claim 15**, Manual teaches utilization of quality data in commodities contracts at page 324, "Deliverable Grades" and page 350, "Futures Contract", fourth line.

**Concerning Claim 16**, Manual teaches pricing based on a variable at page 324, line 4, "Daily Price Limit".

**As to Claim 17**, Manual discloses time of delivery as a variable at page 201, para. 2-5.

**Regarding Claim 18**, Walker et al teach accessing a centralized database installed on an Internet Web server at Col. 5, line 66 to Col. 16, line 22.

**As to Claim 20**, see the discussion of Claim 4 above.

**Concerning Claims 22 and 23**, Manual teaches distinguishing among agricultural crops by geographic regions, product type, and time of delivery at page 199, para. 1 to page 201, para. 6. It would have been obvious to one of ordinary skill in the art at the time of the invention to have distinguished among agricultural products in the combination of Walker et al and Manual because this would have allowed potential sellers to contract for the particular product types grown in their particular areas and deliverable at times suitable to them.

**As to Claim 25**, Walker et al disclose an apparatus for contracting for commodities over a wide area network comprising an application/web server and a database serve at Col. 11, lines 58-63 and Col. 14, lines 30-52; communications links

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for the above at Fig. 1, elements 100, 110, 120; one or more user terminals, Fig. 1, elements 300, 400; and software to store data in the database data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); in response to a command input, displaying a list of desired commodities and related information regarding types, amounts or deliveries of the desired commodities (Figure 9 and Col. 18, line 56 to Col. 19, line 12; receiving input data relating to a specific type and amount of commodity which the supplier is willing to supply (Col. 13, lines 11-22 and 30-34) and generating a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48).

Walker et al do not specifically disclose the storage and processing of information related to agricultural commodities in their invention although they suggest its applicability to commodities when they describe commodities as being handled best by buyer-driven markets, such as their invention. See Col. 2, lines 45-54. Manual discloses information related to agricultural commodities including types and amounts of agricultural commodities (page 194), trading by buyers desiring agricultural commodities and suppliers willing to supply agricultural commodities (pages 35-46) and sales contracts for such agricultural commodities (pages 315 and 324). It would have been obvious to one of ordinary skill in the art at the time of the invention to have processed the agricultural commodities information to generate contracts as disclosed by Manual in the system of Walker et al, because this would have provided a buyer-driven market, suitable for commodities and which had the advantages recited by Walker et al at Col.



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10, line 57 to Col. 11, line 3. See the quotation of this text from Walker et al in the discussion of Claim 1 above.

**As to Claim 26**, Walker et al disclose a wide area distributed network (WAN) at Col. 11, lines 58-63; plural seller computers in operative communication with the WAN at Fig. 1, elements 300, Fig. 3 and Col. 14, lines 53 to Col. 15, line 22; plural buyer computers in operative communication with the WAN at Fig. 1, elements 400, Fig. 4 and Col. 15, lines 22 to 29; a database storing data relating to a specific type and amount of commodity which a supplier is willing to supply (Col. 13, lines 11-22 and 30-34); a database storing data relating to buyers' desires for commodities (Col. 13, lines 1-10 and 23-29); and generation of a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (Fig. 2, element 280 and Col. 13, lines 44-48).

Walker et al do not specifically disclose the storage and processing of information related to agricultural commodities in their invention although they suggest its applicability to commodities when they describe commodities as being handled best by buyer-driven markets, such as their invention. See Col. 2, lines 45-54. Manual discloses information related to agricultural commodities including types and amounts of agricultural commodities (page 194), trading by buyers desiring agricultural commodities and suppliers willing to supply agricultural commodities (pages 35-46) and sales contracts for such agricultural commodities (pages 315 and 324). It would have been obvious to one of ordinary skill in the art at the time of the invention to have processed the agricultural commodities information to generate contracts as disclosed by Manual

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in the system of Walker et al, because this would have provided a buyer-driven market, suitable for commodities and which had the advantages recited by Walker et al at Col. 10, line 57 to Col. 11, line 3. See the quotation of this text from Walker et al in the discussion of Claim 1 above.

**Concerning Claim 27**, Walker et al disclose a software security component to restrict access to the system at Col. 12, lines 27-30 and Col. 15, lines 3-5.

**Regarding Claim 28**, Walker et al disclose varying levels of access to data by authorized users of the system at Col. 27, line 19 to Col. 30, line 29.

**Claims 3 and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Commodity Trading Manual and further in view of the Microsoft Press Computer Dictionary, Third Edition, hereinafter referred to as Dictionary.

**As to Claims 3 and 19**, Walker et al and Manual teach the invention substantially as claimed. See the discussions of Claims 1, 13 and 18 above. They do not specifically disclose the use of Java or other applets for input of and access to information to the system. Dictionary, however teaches the Java language and Java applets as useful for secure, robust, platform neutral programming of interactive applications for Internet Web browsers. See Java and Java applet topics, page 268 of Dictionary. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used Java applets for data input and access as taught by Dictionary, in the combination of Walker et al and Manual because this would have

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provided a for secure, robust, platform neutral method for users to input and access information to contract for commodities on the Internet.

**Claim 21** is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Commodity Trading Manual and further in view of the Peterson et al.

**As to Claim 21**, Walker et al and Manual teach the invention substantially as claimed. See the discussions of Claim 13 above. They do not specifically disclose the allocation of data of numbers of acres among a plurality of grain elevators. Peterson et al, however suggest the need for such an allocation in Background of the Invention. They disclose that grain dust is a substantial problem in handling of agricultural products, as it may be contaminated with fungus or cause explosions. It would have been obvious to one of ordinary skill in the art at the time of the invention to have allocated data on agricultural crops among a plurality of grain elevators as taught by Peterson et al in the method of Walker et al and Manual because this would have reduced the risk of total loss of a contract's agricultural crops in the event of grain contamination or explosion a particular grain elevator by "spreading the risk around" among elevators.

**Claim 24** is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Hipsley.

**As to Claim 24**, Smith discloses the invention substantially as claimed, including provision of a control script to store state data during the execution of a task, the state data stored identifying a subset of master state data stored in the database system (Column 5, line 31 to Col. 7, line 4, particularly Col. 6, lines 14-23); entering the state data stored by the browser into the database system to update the subset of the master

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state data upon completion of the task (Col. 6, lines 19-23 and Col. 7, lines 1-4); and preventing the state data stored by the browser to be entered into the database system and updating the subset of the master data when the task is aborted by the user (Col. 6, lines 14-19).

Smith does not specifically disclose the application of his method to update databases. Hipsley discloses the updating of databases at page 74, item underlined and "UPDATE" topics at pages 92 and 102. It would have been obvious to one of ordinary skill in the art at the time of the invention to have updated the databases disclosed by Hipsley in a combination with the method of Smith because this would have brought the benefits of generally applied technique of Smith to the specific instance of Hipsley's database. The combination is also suggested by the fact that the Smith and Hipsley have common matter in data entry.

***Response to Arguments***

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Walker et al reference to either a constructive reduction to practice or an actual reduction to practice. There is insufficient evidence presented in the Affidavit to show due diligence for the period from the summer of 1997 to the summer of 1998 to persuade the Examiner that the diligence requirement has been met. For this reason, Walker et al is not removed as a prior art reference. See MPEP 715.07(a).

Additionally, while applicants assert in Section A of the Affidavit, that the whereabouts of the inventors who did not sign are unknown, no evidence is presented to show that a good faith effort was made to obtain the signatures of the remaining inventors. The fact that their whereabouts are unknown only informs that Applicants lack knowledge, not that an attempt was made to obtain signatures. For this further reason, Walker et al is not removed as a prior art reference. See MPEP 715.04.

Regarding Applicants' arguments about the rejection of Claims 1, 2, 4-18, 20, 22, 23 and 25-28, Applicants assert that there is no teaching to combine Walker et al and the Manual. They do not however provide any substantive argument to show why the Examiner's reason to combine the references, set forth at page 3, third full paragraph to page 4, first full paragraph of the prior Office Action, is incorrect. Such an assertion is non-persuasive.

Regarding Applicants' arguments about the rejection of Claims 3 and 19, Applicants assert that there is no teaching to combine Walker et al and the Manual.

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They do not however provide any substantive argument to show why the Examiner's reason to combine the references, set forth at page 10 of the prior Office Action, is incorrect. Such an assertion is non-persuasive.

Concerning Claim 24, Applicants argue at, at page 5, third paragraph of their Response, that Smith does not deal with "state data stored by the Internet browser during the execution of a task". In the prior paragraph, Applicants admit that the file state of Smith is activated by the pulldown menu of a *browser*, thus showing that the state data is stored through browser activity. Further, the Examiner reads "the execution of a task" phrasing as being exactly the data storage disclosed by Smith. Applicants argue that Smith having states does not make its data (entered by a user) "state data" but provide no substantive reason for the difference. The Examiner interprets the states of Smith as encompassing the state data claimed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Kyle whose telephone number is (703) 305-4458. The examiner can normally be reached on Monday - Friday, 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

crk

crk  
November 5, 2001



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